

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS No. 1120 of 2018

IN

SUIT No.46 of 2014.

M/s Samarth Development Corporation ..Applicant.

In the matter between :-

M/s Kalpavruksh Developers ..Plaintiff.

Vs

M/s Samarth Development
Corporation & Ors ..Defendants.

Mr. Rajiv Narula i/by J. Narula & Associates, Advocates
for the Plaintiff.

Mr. Atul Daga i/by Kunal Bhanage, Advocate for
Defendant No.1.

CORAM : B. P. COLABAWALLA, J.

DATED :- 14TH JANUARY, 2019.

P.C. :

1) This Chamber Summons has been filed by Defendant No.1 seeking an amendment of the written statement as per the Schedule annexed thereto.

2) Though no affidavit-in-reply has been filed on behalf

of the plaintiff, Mr. Narula, learned Counsel appearing on behalf of the plaintiff, submitted that this chamber summons ought not to be allowed in view of the fact that defendant No.1 is taking mutually destructive pleas by virtue of this amendment and therefore cannot be allowed. For example, Mr Narula submitted that in the written statement, reliance was placed by defendant No.1 on agreements of 1975 and 1976, whereas, now, defendant No.1 wants to rely upon the supplementary agreement of the year 1982. He therefore submitted that this cannot be allowed to be done by virtue of this amendment.

3) On the other hand, Mr Daga, learned Counsel appearing on behalf of Defendant No.1 submitted that the amendment does not take any mutually destructive or inconsistent pleas with the ones pleaded in the written statement. In any event, he submitted that different parameters apply for amending the written statement than the ones that apply for amending the plaint. He submitted that now it is well settled that the defendant in any event can take mutually destructive pleas in the written statement. In this regard, Mr Daga relied upon a decision of the Supreme Court in the case of **Baldev Singh and Ors Vs. Manohar Singh & Anr,**

(2006) 6 SCC 498. He therefore submitted that chamber summons for amending the written statement be allowed.

4) I have heard learned Counsel for the parties and have perused the papers and proceedings in the chamber summons. It is not in dispute that the trial of the suit has not commenced. As held by the Supreme Court in the case of **Baldev Singh** (supra), it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. The rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of the claim has necessarily no counterpart in the law relating to amendment of the written statement. Considering a new ground of defence or substituting or an altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. It is in these circumstances, that the Supreme Court held that in case of amendment of a written statement, the courts are inclined to be more liberal in allowing the amendment.

5) Paragraph 15 and 16 of this decision clearly

enunciate this law and read thus :-

15. "Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the Appellants in their application for amendment of written statement, excepting the plea taken by the Appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the Plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of *Modi Spinning and Weaving Mills Co. Ltd. and Anr. v Ladha Ram and Co.* (1976) : 4 SCC 320, this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written

statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that Defendants/Appellants are not allowed to take inconsistent pleas in their defence.”

6) This being the position, even assuming for the sake of argument that defendant No.1 has taken mutually destructive or inconsistent pleas by virtue of this amendment, that cannot be a ground for disallowing the same, especially considering that even the trial of the suit has not yet commenced. In these circumstances, the chamber summons is allowed in terms of prayer clause (a) which reads thus :-

(a) That Defendant No.1 be allowed to carry out amendments to the written statement in Suit No. 46 of 2014 as per the Schedule of Amendment annexed hereto.

7) The amendment to be carried out within a period of two weeks from today and a copy of the amended written statement shall be served on the Advocates for the Plaintiff within a period of two weeks thereafter. It is made clear that I have not opined on the merits of the amendment and with reference to the same all contentions of the plaintiff are kept open in that regard.

8) Chamber summons is disposed of in the aforesaid terms. No order as to costs.

(B.P. COLABAWALLA, J.)